

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 23, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Mary Bills, Jon Carlson, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor; (Steve Duvall and Linda Hunter absent); Kathleen Sellman, Ray Hill, Mike DeKalb, Jason Reynolds, Becky Horner, Brian Will, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and publicly expressed the Commissioners' deepest sympathies to their colleague, Linda Hunter, in the loss of her husband.

Chair Schwinn then requested a motion approving the minutes of the meeting held January 9, 2002. Carlson requested to amend page 8, the second paragraph under Administrative Action, referring to Change of Zone No. 3349, as follows:

Carlson's question is: If the P is a mistake, then what's the right zoning? Is the character of the surrounding property and the surrounding neighborhood is R-4?"

Steward moved to approve the minutes, as amended, seconded by Krieser and carried 6-0: Bills, Carlson, Krieser, Newman, Schwinn and Steward voting 'yes'; Duvall, Hunter and Taylor absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

January 23, 2002

Members present: Bills, Carlson, Krieser, Newman, Schwinn and Steward; Duvall, Hunter and Taylor absent.

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3254; SPECIAL PERMIT NO. 1943; STREET AND ALLEY VACATION NO. 01022; COUNTY FINAL PLAT NO. 01036, PRAIRIE VISTA; COMPREHENSIVE PLAN CONFORMANCE NO. 01005; COMPREHENSIVE PLAN CONFORMANCE NO. 01006; STREET AND ALLEY VACATION NO. 01023; and STREET AND ALLEY VACATION NO. 01024.**

Item No. 1.1, Change of Zone No. 3254; Item No. 1.2a, Special Permit No. 1943; Item No. 1.2b, Street and Alley Vacation No. 01022; and Item No. 1.3, County Final Plat No. 01036 were removed from the Consent Agenda and scheduled for separate public hearing.

Carlson moved to approve the remaining Consent Agenda, seconded by Bills and carried 6-0: Bills, Carlson, Krieser, Newman, Schwinn and Steward voting 'yes'; Duvall, Hunter and Taylor absent.

CHANGE OF ZONE NO. 3254,
A TEXT AMENDMENT TO THE ZONING ORDINANCE
TO CLARIFY DEFINITIONS, TO INCLUDE
REVISED ELEVATIONS AND VERTICAL DATUM
AND TO ADOPT A REVISED AIRPORT ZONING MAP.
PUBLIC HEARING BEFORE PLANNING COMMISSION

January 23, 2002

Members present: Steward, Newman, Bills, Carlson, Krieser and Schwinn; Hunter, Duvall and Taylor absent.

Staff recommendation: Approval.

This application was removed from the Consent Agenda at the request of the Commission and had separate public hearing.

Proponents

1. Mike DeKalb of the Planning staff appeared to answer questions. He explained that the characteristic of the requested change is basically a "clean-up". This text amendment has been in process for about two years. It came about when we were changing the elevation readings from main sea level to NAVD 1988. In addition, the Airport has extended its boundaries, purchased additional land and constructed additions to the ends of the runways. This text amendment embodies all of those changes. The Airport Authority and Planning staff have worked with Building & Safety and the City Law Department to make these corrections. The old Airport Zoning Map was based on USDS contours. The proposed revised map uses GIS data, so it is the same information but more accurate.

Schwinn inquired whether the property owners around the airport will be affected in any way by these changes. DeKalb suggested that there should be no effect. But if there is some effect, it would now be more accurate. In other words, if the property was not in the gray area prior but is now because of better information, it certainly could have an impact. However, DeKalb was not aware of any specific instances where there would be a change.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Steward moved approval, seconded by Bills and carried 6-0: Steward, Newman, Bills, Carlson, Krieser and Schwinn voting 'yes'; Hunter, Duvall and Taylor absent.

COUNTY FINAL PLAT NO. 01036

PRAIRIE VISTA

ON PROPERTY GENERALLY LOCATED

AT NO. 176TH STREET AND HAVELOCK AVENUE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2002

Members present: Steward, Newman, Bills, Carlson, Krieser and Schwinn; Duvall and Hunter absent; Taylor arrived during the hearing.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda due to a letter received from Mark and Pamela Forster.

Mike DeKalb of Planning staff presented the letter from the Forsters. They own a lot and house adjacent to this subdivision. They generally support the final plat but desire to retain the 60' side yard setback on the south boundary of the southernmost lot. The proposed 15' is not consistent with the AG lots on No. 176th. This was discussed during the preliminary plat process, but the plan has not been altered.

Proponents

1. Lyle Loth of ESP, 601 Old Cheney Road, appeared on behalf of the applicants. He had no objection to adjusting or compromising the side yard setback, with two provisos: First, Loth is not sure the developer would be comfortable with the full 60'. The AG zoning district does provide that a 60' side yard setback is required, except under conditions where the lot width is less than 550'. If the lot width is less than 550', the side yard can be reduced to 10%

of the width. This developer would be willing to compromise to this kind of language. The other proviso is that he is not sure how to get the mechanics of this in place because there is an approved special permit for community unit plan which shows the 15' side yard setback in place. He is not sure how simply showing a different setback on the final plat changes the approved community unit plan. However, Loth believes it can be worked out between this meeting and the final approval at County Board level. Loth requested that the Commission approve this final plat and move it on to the County Board and he will work with the neighbors to get the setback issue resolved.

Steward inquired of staff as to the controlling document--the special permit for the community unit plan or the final plat. DeKalb indicated that the final plat must be consistent with both the community unit plan and the preliminary plat. The controlling document is the special permit for the community unit plan. Perhaps the easiest and most binding way to accomplish the compromise would be an administrative amendment to the CUP to reflect that setback. That could be done by the Director of Planning administratively. The setback is shown today at 15'. AGR zoning requires 60'. Those lots to the south all utilize the adjustment factor which Loth read from the ordinance. On the south side the people who sent the letter do not have 60'.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Carlson moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated January 3, 2002, with amendment to provide that an administrative amendment to the community unit plan occur that changes the side yard setback to 10% of the lot width on the south boundary of the southernmost lot, seconded by Newman and carried 6-0: Steward, Newman, Bills, Carlson, Krieser and Schwinn voting 'yes'; Taylor abstaining; Duvall and Hunter absent.

SPECIAL PERMIT NO. 1943
FOR A PARKING LOT IN THE R-2 RESIDENTIAL DISTRICT
ON PROPERTY GENERALLY LOCATED AT
WEST E STREET AND FOLSOM STREET
and
STREET VACATION NO. 01022
TO VACATE THE NORTH 12' OF WEST E STREET,
FROM THE EAST LINE OF FOLSOM STREET TO
THE WEST LINE OF S.W. 6TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2002

Members present: Steward, Newman, Bills, Taylor, Carlson, Krieser and Schwinn; Duvall and Hunter absent.

Staff recommendation: Conditional approval of the special permit and a finding of conformance with the Comprehensive Plan on the street vacation.

These applications were removed from the Consent Agenda at the request of Danny Walker.

Proponents

1. Kent Seacrest appeared on behalf of **Lincoln Plating Company**. This is a special permit to allow a parking lot in residential zoned property along with a street vacation request. Over four years ago, Lincoln Plating knew it was growing and developed a master plan, which was shared with the neighborhood. Pieces of this master plan were brought forward in 1998 and 2000, and at those times the applicant met with the neighborhood to reconfirm the plans and there was no opposition.

These applications are another part of the master plan, which is a parking lot on the south side of the main facility. Initially, this was proposed as a change of zone to commercial. Lincoln Plating is trying to get a four-row parking lot to provide capacity for customers and employees. Staff was opposed to the commercial zoning and recommended a special permit rather than the change the zone. The residential zoning had 25' front yard setback which prevented the parking lot being requested. The staff suggested shifting the road that has not yet been built so that they can meet the 25' setback in the residential zone, thus the request for the street vacation. Lincoln Plating has given the city a deed for land on the south side and the staff is willing to vacate some land on the north side in order to shift the road to the south.

Seacrest is unaware of any neighborhood concerns.

Steward inquired whether this is an alleyway. Seacrest responded, "No, it's a 'confusing-way'". Seacrest explained the proposal on the map. E Street is being shifted. There will be

an outlot on the south that is landscaped. The protection for the neighbors is the public street, an outlot that is landscaped and an alley. There is a tree mass back there as well.

Opposition

1. Danny Walker wanted to know the actual size of the proposed parking lot. If he understands correctly, this E Street (which does not actually exist) was vacated some time ago and he wants to know if that is true. His main concern is that there is a lot of expansion going on in that business, sitting in the middle of the floodplain with hazardous chemicals, etc., etc., etc.

Jason Reynolds of Planning staff advised that the total area of the special permit is 1.39 acres, with about 25' of green space between the sidewalk and the parking area on two sides. He estimated the parking lot to be 1.1 acres in the area of the special permit. He believes there was a vacation of E Street with the previous Lincoln Plating Addition preliminary plat, which created E Street. This vacation is vacating a portion of that E Street that was created a few years ago.

Response by the Applicant

Seacrest agreed with the staff comments. There used to be an E Street further to the north that was shifted with the preliminary plat. We did that to create a new street that the neighbors did not have to rely on, but to allow for Lincoln Plating's commercial traffic to go out to Folsom and not come through the neighborhood. We finally do have a circulation plan to separate the commercial traffic from the residential traffic with this proposal.

Newman inquired as to the effect of the conservation easement. Seacrest suggested that, 1) it's an open space that will not have buildings or signs, and 2) it will sustain the floodplain capacity in that area.

Public hearing was closed.

SPECIAL PERMIT NO. 1943

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Steward moved to approve the staff recommendation of conditional approval, seconded by Krieser.

Schwinn believes that Danny Walker did bring up a serious question about hazardous chemicals in the floodplain; however, we are only talking about a parking lot in front of this business and the facility has been there long before any of these Commissioners got here. This action is to make sure the parking lot fits into the neighborhood as well as possible. He appreciates what Lincoln Plating is trying to do for the neighborhood.

Motion for conditional approval carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Duvall and Hunter absent.

STREET VACATION NO. 01022

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Steward moved to find the street vacation to be in conformance with the Comprehensive Plan, seconded by Krieser and carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Duvall and Hunter absent.

CHANGE OF ZONE NO. 3351

FROM H-4 GENERAL COMMERCIAL

TO I-1 INDUSTRIAL

ON PROPERTY GENERALLY LOCATED

AT S.W. 5TH STREET AND WEST "A" STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2002

Members present: Steward, Newman, Bills, Taylor, Carlson, Krieser and Schwinn; Duvall and Hunter absent.

Staff recommendation: Denial.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant and requested a two-week deferral, pending potential resolution of alternatives to this change of zone.

Steward moved to defer, with continued public hearing and administrative action scheduled for February 6, 2002, seconded by Carlson and carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Duvall and Hunter absent.

2. Jake Von Busch, the owner of the property and applicant, testified that he must move his business because the railroad has taken the I-1 property that he has now. He fought years ago to get that I-1 and he does not want to give it up for H-4 because of the prescribed

setbacks and there is not enough land to handle those setbacks. That place was nothing but a dump when he took it over. He just purchased the five lots next to it which was being used for a garbage dump. He is in the process of cleaning that up.

CHANGE OF ZONE NO. 3352
A TEXT AMENDMENT TO THE ZONING ORDINANCE
TO ALLOW STORAGE OF VEHICLES FOR SALE IN
THE FRONT YARD IN THE H-2, H-3 AND I-2 DISTRICTS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2002

Members present: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn; Duvall and Hunter absent.

Staff recommendation: Denial.

Brian Will of Planning staff submitted a letter in opposition from Rich Wiese.

Proponents

1. Bill Austin of Erickson & Sederstrom, 301 South 13th Street, presented the application on behalf of the applicants, the Nebraska Independent Automobile Dealers Association and the West "O" Area Business Association. This amendment would create a new section which would allow for the storage of vehicles for sale where parking is permitted in the H-2, H-3 and I-2 zoning districts, under certain specified conditions (a conditional use). The original application included B-3; however, the applicant is amending the application to delete the B-3 district from this text amendment in response to concerns raised by the Neighborhood Roundtable.

In addition, Austin stated that this application now proposes a 5' clear zone from the front lot line where storage will not be permitted. This is a compromise to what staff proposed at a December 10, 2001, precouncil meeting.

Austin also clarified that the original proposal did not suggest eliminating the special permit process. The staff has expressed concern that failure to eliminate the special permit application procedure did not accomplish one of the goals of the City Council. Austin's clients did not include a repeal in the original proposal because of apprehension about repealing a special permit process. Austin realizes the concern raised by staff and City Council, and he is amending the application to include the repeal of the special permit process at this time, with the understanding that this application is being presented as an "all or nothing" proposal. Please do not divide the question.

Why are we here? Austin noted that it has been only a couple months since he came forward with the Red Star Auto application for a special permit for this same type of use. That special permit was initially approved by the City Council but was subjected to a Mayoral veto. We are here because the City Council suggested it was willing to consider a procedure which would take the Council out of the hassle of hearings on these sorts of permits. Austin believes this proposal incorporates those conditions that have typically been appended to special permits for this type use since 1977. He believes this type of conditional use best comports with the City Attorney opinion of 1997 when a special permit process was at issue, and which the Mayor's veto contravened. In 1997, the staff report specifically stated, "The City Law Department has issued an opinion that states that merely neighborhood opposition is not enough to deny a special permit." Nevertheless, Red Star's special permit was vetoed and the Mayor said, "This Council's action could now set a precedent of approving a special permit when there is opposition from a neighboring business." Austin went on to state that the Mayor vetoed the Red Star Auto special permit notwithstanding that no other application for this use had been denied.

Austin submitted that the conditional use process would take the arbitrariness out of the process.

Why should this be permitted? Austin suggested that parking in the front yard is the nature of these highway districts which are intended for high visibility uses. Parking is already permitted in the front yards in the H-2, H-3 and I-2 zoning districts. Signs are permitted in the front yards in those districts; fences can be constructed in the front yard. It is no answer to say this change would create clutter in the front yards. This will properly regulate this use and give recognition to what is already occurring. It will provide what is needed by the industry that has been responsible for the rehabilitation of the West "O" area up to this date. 62% of business for used car dealers comes from drive-by traffic. They need visibility to survive.

Austin further pointed out that when the special permit process was instituted, it was recognized that this was a small difference from what is already permitted and the only real function of the special permit was to condition the use to avoid obnoxious activities, like raising hoods and trunks and putting the cars on platforms. The conditions that this application proposes would address those concerns.

Austin submitted a matrix showing the minimal impact of this proposed text amendment.

Newman asked how they came up with 5' from the front lot line. Austin suggested that 5' is used in the design standards right now—it is one of the dimensions utilized when making changes in the landscaping. It was a figure that came out when he was talking with staff. Newman wondered whether 10-15' would be as reasonable. Austin believes 10-15' moves them too far back. Red Star is some 28' back from the curb line to the front yard, and another 5' would move it back further.

2. Karl Jensvold, who operates an auto center on West “O” Street and current President of the West “O” Area Business Association, testified in support. The entire Association agrees that this is something that can work for us and will not hamper the projects in place or that we are working on in the West “O” area.

3. Danny Walker testified that he toured the West “O” area and he has known that area for years. It seems like one individual lot is being singled out and picked on. Before that business (Red Star Auto) was there, that lot was total garbage. Then he reads the article in this morning’s paper—one phone call to the Mayor constitutes a rejection? One phone call overrides a City Council action? Maybe the Mayor should look at some of the areas like the older neighborhoods. He suggested that the Mayor spend his time on something like 6th & “G” behind the Park School. This is an individual’s livelihood and he does not appreciate going to meeting after meeting and hear one person say he represents the West “O” Area Business Association when there were only three or four people attending those meetings.

Opposition

1. Walt Hutchison, owner of Popeye’s Chicken, testified in opposition. This is about visibility. Who does visibility belong to? Should it be taken from one business and given to another? Popeye’s Chicken has been there for 23.5 years. Every cent of his parents’ money and his money went into getting this restaurant business. They all work there 7 days a week. He believes his family members have been great leaders. When they were putting Popeye’s in, they conformed to every setback and sign requirement and they believed their neighbors would do the same. He thought the laws were enacted by smart people to protect people like him. Who does the visibility belong to? Does it belong to everybody or just car dealers? Hutchison displayed a map showing what would happen if a car lot is placed on either side of his restaurant. Red Star Auto is on the east side. He has no wish for Red Star Auto not to succeed, but Popeye’s Chicken is sitting back where the city told them they had to be with the building. By this proposal, the attention is drawn away from the Popeye’s Chicken building. On the other side is a car wash. If this legislation is passed, that car wash could become a car lot, so Popeye’s Chicken will be in this tunnel of cars. It takes his credibility away and the visibility of his restaurant away. This will also take away the viability of his business and will reduce the net worth of his business. Do car dealers need the visibility more than we do? No, the restaurant draws people in by visibility and signage. We need to think about what the city is giving up in passing this. If we lose 15% of our business, we are back to zero again and our business will not be worth anything to a buyer.

The Popeye’s Chicken building is set back 70'. Popeye’s has a monument sign rather than a pole sign because they can have a larger sign with the monument sign.

Hutchison also confirmed that Red Star Auto has put a fence up in front of the Popeye’s Chicken sign.

Carlson wondered whether Hutchison had any thoughts about the potential trade-off in that now they can park customer cars in that area, but they come and go. If you move the ability for anything to be parked back 5' or 10', at some point do you gain a sufficient sight line? Hutchison responded, stating that one of the problems with parking cars up there (before they were moved back) is that people (customers) could not really identify where to park their cars and they were parking in the Popeye's lot and walking over to Red Star Auto.

2. Craig Groat testified in opposition. He is concerned about the aesthetics of the city and quality of life. He cited from the Code of Ethics of the American Planning Association. Groat really dislikes driving down West "O" Street because of its appearance. Cutting into the setback will cause a tremendous amount of harm on the aesthetics. He showed photos of situations in other communities with quality controls and landscaping requirements. A number of years ago, Misle Chevrolet at 48th & O kept parking cars in the setback area. They were repeatedly fined. Finally, the city gave them a permit to park out there and it is one of the ugliest areas in town and is a detriment to our city. Quality businesses want to come in where there are zoning requirements for aesthetics. They don't want to come in and play around with stuff like this. He has repeatedly seen business people come that do not consider the long range consequences. Each little one has a cumulative affect and it is another nail in the coffin of our city becoming a quality city and having quality employers. All they have to do is invest a little bit of money. These people (businesses) need to be educated that landscaping and aesthetics will bring people and help their bottom line.

Staff questions

Carlson asked staff to confirm the street right-of-way in the area of Red Star Auto. Brian Will of Planning staff did not have this information. Carlson then inquired as to the typical difference between street and sidewalk. Dennis Bartels of Public Works stated that the sidewalk is close to the property line--in the zero to 4' range along arterial streets. Carlson indicated that he was trying to get a sense of H-2 and H-3--don't they typically exist on wider streets or wider arterials? What existing distance buffer might there be by virtue of the size of the right-of-way before you get to the setback? **Vince Cornell, Red Star Auto**, appeared and stated that he had measured that just today. From the curb to the front edge of the sidewalk it is 13'. The sidewalk is 4'. From the area of the sidewalk to the property line is another 11', so it is 28' from the edge of the curb to the property line, and he is parking 30' back behind that.

Carlson wondered whether these numbers are indicative of the average. Will indicated that this would need to be researched on a case-by-case basis.

Schwinn noted that obviously, 28' from the back of the curb is applied right-of-way and in that area that is a 5 lane road. So we do have some pretty big rights-of-way. Schwinn's concern is not the impact on West "O" Street, but the ramifications when we get into No. 48th where we

don't have that width of right-of-way. Will concurred that this is a much larger issue than just the West "O" area and only considering Red Star Auto in this location is not appropriate. It causes problems all throughout the city. We need to look at this in a broader context such as entryway corridors and public way corridors.

Schwinn wondered whether staff could get a matrix together to explain what the ramifications may be in other parts of the city and with the public way corridors to give the Commission a greater sense of what the impacts might be throughout the city. Schwinn would like to see a deferral.

Steward believes it is a waste of staff time to go through that process. There are numerous differences in right-of-way designation in the H-2, H-3 and I-2 district. "O" Street is a highway-- we've got industrial circumstances. Steward stated that he is not just concerned with the sight line, but also with the adjacent properties. You could be at the edge of one of these zones and there would be legitimate concerns. You could be in the middle and have different concerns. He is ready to deal with this today.

Will commented that he is not sure the width of right-of-way is necessarily a large factor or one of the criteria being considered. We are talking about improvements on any particular property owner's site. All of these improvements are out of the right-of-way. From the staff's perspective, the discussion should be limited to the improvements we are talking about and how they impact the property, aside from the right-of-way.

Carlson recalled that there was some talk at the City Council level about having some further re-investigation into this type of proposal. Is this proposal the result of that? Will explained that after the special permit for Red Star Auto was vetoed, the City Council held a precouncil meeting and directed staff to take a look at alternatives to address the issue. Staff did draft at least one alternative, but that amendment is now being circulated among staff, the Council and the Mayor to reach consensus. In the meantime, this application was submitted and the staff turned their focus toward review of this application in order to bring it forward. This is where we are today. The staff consensus at this point is that it makes sense to review any amendments that deal with parking in the front yard in the broader context of the standards that will be in the process of being developed for entryways and public way corridors. This issue is not just unique to West "O" Street.

Response by the Applicant

Austin concurred that staff did mention the corridor and entryway studies in the staff report. At this point, as best he can determine, life does have to go on in terms of looking at what is appropriate with this special permit process and whether there is an alternative. He does not see why it would be appropriate to wait for those studies. No matter what happens with the

entryway studies or public way corridor studies, what you have right now in the H-2, H-3 and I-2 zoning districts, as a matter of right, is parking in front yards. And those studies are not going to change that. Everyone who is parking in the front yard right now is going to be able to do that as a nonconforming use.

Austin also noted the mention of East "O" by the opposition. There you can easily see that everybody right now is violating the provision that says you shall not store vehicles in the front yard. Just about everyone except Red Star Auto has their vehicles too close right now. As a conditional use, it will require the adjustments at the time of the building permit. It would also be easier to enforce. The only way it is being enforced now is on a complaint basis.

Austin also suggested that if one went out and looked at where Red Star's vehicles are parked now, one would find it absurd as to how far back they are required to be from the right-of-way of West "O" Street. Austin pointed out that the zoning districts being dealt with in this text amendment are highway areas where you normally have a wider right-of-way. This is not all across the city--only in those districts designated for highway uses.

Finally, Austin referred to the picture shown by Popeye's with the vehicles next to the restaurant--if this was not a second hand auto dealer, those cars can park there as of right today. Anyone in H-3 can park those cars right up there for employee parking, customer parking and repair parking all day. The only cars that cannot park there now are those that are for display for sale by an auto dealer. Austin suggested that this is to some extent rather unfair discrimination. Others can use it for their business but the auto dealer cannot. His clients are willing to compromise with 5' further back to make it more attractive. This is not a radical intrusion into the front yards. It is actually occurring now in most places and this would regulate it.

Steward clarified that Red Star Auto can park customer cars in that front yard now. Austin agreed.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Steward moved to deny, seconded by Newman.

Steward believes it would be a major mistake to accept an ordinance change stimulated by one disagreeable circumstance. He fully agrees that this would make it easier to administer. If we don't want to deal with special cases, we should just write one ordinance and say we can do whatever we want if we are a business and everyone will fend for themselves. There are edge circumstances; there are changing requirements for right-of-way conditions; there are future plans and ideas about beautification that haven't even been discussed. He believes

we need to leave the front yard setback alone in these districts and find some other way to deal with apparently what this property owner believes is an egregious situation. He will not support this under any circumstance for any property owner, whether it is a used car operation or some other business.

Newman stated that she would be more comfortable if the staff came forward with their recommendations. The actual width of frontage on certain lots affects visibility.

Schwinn will vote against the motion. Every time the special permit came forward he has voted in favor because he does not see the difference between customer parking in the front area and a used car parked in the front area. He believes that the car dealers can do a better job of putting better cars in that area that look nicer than what you may see otherwise. He drives up and down "O" Street a lot and he noticed that the Red Star cars parked back is noticeable amongst all of the others. Their lot probably looks the best of any of them out there. He believes that this is limited enough in terms of the zoning districts to which it applies.

Taylor stated that this is a difficult decision because he definitely agrees that a business should be able to do its job. But another consideration is the neighbors. He is also concerned about the aesthetic qualities that we are seeking to realize in our City. He would like to see businesses succeed, but weighing those considerations, he would have to agree at this point with Steward and Newman in terms of denial. He is regretful, but he believes it is necessary.

Motion to deny carried 6-1: Steward, Newman, Taylor, Bills, Carlson and Krieser voting 'yes'; Schwinn voting 'no'; Duvall and Hunter absent.

ANNEXATION NO. 01007;
CHANGE OF ZONE NO. 3338
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;
CHANGE OF ZONE NO. 3339
FROM AG AGRICULTURAL TO O-3 OFFICE PARK;
SPECIAL PERMIT NO. 1930,
THOMPSON CREEK COMMUNITY UNIT PLAN;
PRELIMINARY PLAT NO. 01015, THOMPSON CREEK;
and
USE PERMIT NO.141,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 56TH STREET AND UNION HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2002

Members present: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn; Duvall and Hunter absent.

Staff recommendation: Deferral of the annexation; approval of the changes of zone, with revisions to the legal description; and conditional approval of the community unit plan, preliminary plat and use permit.

Jason Reynolds of Planning staff clarified Condition #1.1.8 of the Community Unit Plan, on page 120: "Connect Union Hill Road from Greycliff Drive to Garrison Drive." This does not mean that Union Hill Road would be extended directly from where it is, but a road connection between Greycliff Drive and Garrison Drive somewhere in that lot.

Proponents

1. Mark Hunzeker appeared on behalf of **Hampton Development Services**, the developer. This project is the result of quite a lot of planning in conjunction with the neighbors. Campbells and Home Real Estate both participated in a series of meetings involving the urban planning design firm with a number of design charrettes where a lot of neighborhood input was taken. The concept here is to develop a "new urbanism" type subdivision--urban village. We have made a lot of effort in the design of this project to preserve the existing topography and the existing drainage channel, and to adjoin the neighbors to the north, south and east in such a way as to provide for connections that facilitate the development of the abutting properties.

With respect to the preliminary plat conditions, Hunzeker stated that there is an issue with Condition #1.1.7 which requires the removal of Outlot labels E, F, G and H, and requires that they cannot be final platted. This raises a question and needs explanation from staff. Hunzeker understood the instructions to be to label these as outlots. These outlots are generally located in the northeast and eastern area of the plat. The reason they have been labeled as outlots and the reason they cannot be final platted is because the streets that abut those lots are on property under different ownership and they will not be able to be platted until the adjoining property is platted. By not labeling them as outlots, when we come in with a final plat, we will be creating parcels along our east boundary and to the north that amount to less than 10 acres. That creates a subdivision question because in the past we have been told we cannot create a parcel that is less than 10 acres. So all we are trying to do is delineate those areas as being unplattable until we are able to get streets dedicated abutting them. But the way it appears, we may not be able to plat a substantial amount of other land unless we have the ability to label these as outlots and have waivers of the street frontage requirements.

Hunzeker requested that Condition #1.1.10 of the preliminary plat be deleted. This condition requires that the sewers be revised so that they do not exceed maximum depth. There are a couple of these areas in this plat. As we come off of 56th on the west, the property rises substantially and we have an area where our sewer is about 20' deep and about 200-300' in length where we exceed the depth. There is another area that is also below the recommended depth because we have to get under the drainageway. The reason that we are

deep here is because we are trying to save the existing topography and minimize the amount of cut and fill on the site. We could knock the hill down another 5', but we really don't want to do that because part of the attraction of this property is the topography. It is important to this project to try to keep that as near to the existing topography as possible. It is possible to sewer the area by running a sewer back through the Campbell property along 56th Street, but the Campbell property has no immediate plan for development and we don't know when that will come. The area to the south all sewers back through our other main sewer, so we would only be waiting for a sewer to get to this area and it would stop. We're serving it with a sewer that is below the design standard depth because we are trying to maintain this topography. We could sewer it if we had to cut it down, but we really don't want to do that.

Hunzeker also requested that Condition #1.1.14 of the preliminary plat be deleted. This condition requires the developer to eliminate the 90 degree parking along Billings Drive. There are proposed live/work townhomes on Billings Drive. Other conditions require us to move these townhomes over to the opposite side so that they face one another and to adjust our change of zone to bring them into the O-3 district. We need parking to serve those live/work units. We have been asked to widen the street to a local commercial width, but we need to be able to have parking. 90 degree parking is the most efficient and provides the most parking for those uses. By providing parallel parking, it cuts it in half and it would be insufficient parking for these live/work units.

Hunzeker requested that Condition #1.1.6 of the community unit plan be deleted. This condition requires the addition of a north/south alley in Block 5. Hunzeker stated that by moving these live/work units, they will be providing a north/south alley and would like not to have to provide another one between Lots 39 and 40.

Hunzeker also requested that Condition #1.1.8 of the community unit plan be deleted. The requirement being made is to connect Greycliff Drive (which is mostly north/south) and Garrison Drive with a connecting street. Hunzeker pointed out that they do not exceed the maximum block length of 1320' in this location. In fact, if you measure from the middle of Thompson Creek Drive 1320' south, it comes out somewhere around 120' south of property that is currently owned by LES. It is hard to imagine that LES has a need for this parcel with a substation located nearby. If LES holds onto that property and does not allow a street to go through, the street being required by this condition would dead-end. If the LES property becomes part of a new subdivision, there is room to come all the way to a point where you can run lots in a north/south direction before you get to the 1320' block length requirement. Hunzeker does not believe that this developer should be required to add a street where the design standards don't require it and there is capability to make the connection on the property to be platted next.

Hunzeker requested to amend Condition #1.1.9 of the community unit plan which deals with the setbacks. This developer is requesting a very high degree of flexibility with respect to

setbacks from front, side and rear yards because of the small size of some of the lots as well as alley access points, etc. He does not believe staff is in any disagreement and they are suggesting a generic approval of those with administrative amendments. However, Hunzeker believes there may be instances where building codes or life safety codes might require a greater setback. Therefore, he suggested that a phrase be added at the end of Condition #1.1.9, “....., subject to life safety and building codes.” He also suggested that a new condition #2.5 be added to the community unit plan: “Waiver of front, side and rear yard setbacks subject to administrative amendments providing for minimum setbacks meeting building and life safety codes.” This simply clarifies that the minimum standard for any setback waiver will be the building and life safety codes.

Hunzeker advised that the only other thing about this project that is outstanding is an annexation agreement. He does not believe there are major issues to be resolved and believes it can be accomplished quickly. Hunzeker requested that the Commission go ahead and approve this project, subject to the execution of an Annexation Agreement prior to scheduling on the City Council agenda.

Newman was intrigued by the live/work unit concept and she asked for further description. Hunzeker understands that the concept is to have a unit which, in appearance from the street, resembles a townhome but is in some way (either the upstairs or the main level) an office space for some sort of professional type business, i.e. sole practitioners, law, accountancy, commercial artists, design people, any number of computer related type services. These would be areas where, because of the zoning and because of the approval of the mix of uses, they would be able to have an outside employee where you could not if doing it out of your house. It would also permit small wall signs on the buildings.

Hunzeker confirmed that the live/work units will be in the O-3 and the staff recommendations on the changes of zone are to revise the legal descriptions to address moving some of the live/work townhomes. Schwinn inquired as to rationale for the original location of the live/work units rather than as being required by staff. Hunzeker indicated that they will lose a few units by moving them just because of the curb and the street. The thought was having those units back up to what is likely to be office/commercial might be a little easier transition, but the staff felt strongly that the units should face one another and we basically agreed to do that after further consideration.

Schwinn also noted that staff has a concern about the 90 degree parking, but if you put the 90 degree parking all on one side of the street, then that issue would only be half. Hunzeker believes the traffic issue is minimal with it only being one block long. That particular street should not be a heavily traveled one.

There was no testimony in opposition.

Staff questions

Steward asked staff to explain the rationale for opposing the in-line one side of the street live/work units. Jason Reynolds of Planning staff responded, stating that in general, the urban design principle is to have them facing each other. The practical benefit of having the units opposite each other is that it is easier to park across the street as opposed to down the street. In this block there was previously shown a street and it no longer is in place.

Steward differed with the notion of like uses facing each other. He thinks that is an older design issue and not necessarily a “new urbanism” issue. In the future, he will look for more mixing of these patterns than uniformity of patterns in terms of what the overall environment presents to the buying public. Schwinn agreed.

Steward asked for some explanation of the 1320' distance discussion on connecting Union Hill Road and Greycliff Drive. Reynolds explained that Greycliff Drive down to the end of the property is approximately 850'. By the time you get to the other side of the LES property, it is 1/4 mile. If the LES property is developed, we don't know precisely where that street will be located. This allows for a better street connection when that property does develop. If it does not develop, it makes this subdivision function better. It also provides a better pedestrian connection to the office and business uses along 56th Street. Steward observed that that is a serious concern—the directness or indirectness of the pedestrian routes. Are there any pedestrian ways through any of these longer situations? Reynolds stated, “no, there are not”.

With regard to Condition #1.1.6 on the community unit plan regarding the north-south alley, Steward asked whether staff agrees to delete that condition. Reynolds agreed.

With regard to Condition #1.1.9, Reynolds agreed with the additional language suggested by the applicant regarding the life safety and building codes but he does not believe the addition of Condition #2.5 is necessary. The language, “subject to an administrative amendment”, could be added in Condition #2 instead.

Steward asked whether the staff is comfortable with the Commission acting on the annexation, subject to the execution of an annexation agreement prior to scheduling on the City Council Agenda. Reynolds disagreed. The idea of having the annexation agreement ready to sign prior to Planning Commission allows the Planning Commission to be fully cognizant of the costs involved with this development. All of the recommended approvals are contingent upon the annexation. Therefore, the whole package should be deferred.

Schwinn would like to defer two weeks and would request that the Commission be provided with the agreed upon amendments to the conditions.

Carlson asked staff to speak to the rationale for removing the 90 degree parking. Reynolds stated that one of the unfortunate side effects is that it expands a street. The initial drawings showed sort of a crunch between right-of-way and the front of the townhouses and there wasn't much room to include the parking, sidewalks and a little bit of turf and some street trees. You end up with a right-of-way that will be very wide with 90 degree parking. But, Steward believes you exacerbate that problem by putting them face-to-face. Reynolds suggested that taking away the 90 degree parking eliminates the problem. One of the advertised waivers is waiver of parking requirements, so essentially the office use could make use of on-street parking. The applicant did not provide a parking study to indicate how much parking is required. It would, however, be similar to a home occupation and have the same parking demands. Schwinn observed that by moving the cars at an angle, the diagonal length of the car is actually longer and you use more space than with the 90 degree parking. This developer is trying to bring us the future. Schwinn thinks we should revisit this concept because he believes what the developer originally proposed makes more sense. Steward feels better about the buffer if you get office use on the other side.

Steward asked Public Works to discuss the sewer depth issue. Dennis Bartels of Public Works advised that this piece of ground is Tier II in the Comprehensive Plan—we're leapfrogging to get it built. If we wait for the development to happen along that natural drainage area, the sewer would be in that natural drainage area and we would not have a forever situation where the city has to maintain it or a plumber has to dig a 22' hole to allow the paving. It takes extra expense and equipment to maintain because we are developing a piece out of sequence with the normal downstream/upstream development. Steward observed, however, if we say they can't go to that depth, it means they can't develop that part of the property until the city determines the trunk line to serve that area. Bartels explained that it is a normal 8" local service line which means it would be the responsibility of the property owner that it goes through. There are a number of houses that would have to take service to this sewer along Thompson Creek. The proposal is to run a sewer against street grade. The natural drainage is to the west and north.

Bartels indicated that he raised questions about the right angle parking. 90 degree parking is probably the most unsafe parking you can get because one car beside you obstructs your vision. They are on tight horizontal curves which compounds that problem. Angle parking is more ideal. We're not real interested in plowing snow out of these parking stalls, either. Reynolds also clarified that the applicant requested public streets. But, Bartels advised that even on private streets the city does not allow more than five parking stalls in a group. In the plan that was submitted, the parking went all the way to the right-of-way line with 15' setback to the building, which still needs the sidewalk and street trees outside the right-of-way. Bartels thought it was getting tight.

Response by the Applicant

Hunzeker observed that we have done a lot of talking in Lincoln about the desire to move toward this type of development, and it's going to be a different thing than we're used to. We have design standards which for the most part are standards which are desirable, but in situations such as this they just don't apply. We do need parking for these units and we do need to have enough so that people will feel like they can do business without having to send their customers far down the street to park. Up and down the street are relatively small duplex units, so there is not going to be a lot of available street space to park if there is overflow for the work/live units. They will have access to rear parking but they are going to need some parking on the street. He does not believe plowing the snow will be an issue because these owners won't wait for the city to get there.

With respect to the street connection in Condition #1.1.8 of the community unit plan, Hunzeker expressed frustration because the reasoning behind it is hard to grasp. If the property to the south does not develop, then we won't have a connection. It is still only 850'. If the property to the south does not develop, then you've got an 850' block. If we're not going to stay with the 1320' in the design standards, then at what point are we free to make up a new rule? Hunzeker stated that he understands the comment with respect to pedestrian traffic and he believes they have room to provide a pedestrian way at least at the end of the block, but to put a street through in addition to the fact that it is not required by the design standards, causes some real grade problems. Making the required 3% platforms at those intersections with a short street is problematic. It will require a significant change to the grading plan.

Hunzeker further pointed out that all of this area drains back to the drainage way that runs down to the Beal Slough trunk sewer that presently is at Pine Lake Road, approximately where the railroad track is located. There is just the one area that they cannot serve without exceeding the depth. It would be served back to the north if we couldn't serve it "this way". By serving it "in this direction" we are not creating a gap, we're simply shortening the length of the sewer that comes up "this direction" rather than "that direction". (Hunzeker was pointing to the map during this discussion). We are not in a different drainage basin--we are simply on two different sides of a hill within the same drainage basin. Hunzeker cited several other developments that have been approved with sewers that exceed the recommended depth, i.e. Andermatt, Pine Lake Plaza, Stone Bridge Creek. Hunzeker understands there is a concern and that we don't want to do it all the time, but it is something that is done regularly where the conditions justify it, such as in this case.

Steward moved to defer for two weeks, with continued public hearing and administrative action scheduled for February 6, 2002, seconded by Newman and carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Duvall and Hunter absent.

Steward complimented the applicant for the work and strategy and the courage to try to take on a different kind of development project with the existing standards. In working on the new Comprehensive Plan, it has become more and more clear to him that if we are really going to make it as easy as possible, profitable, reasonable and convenient, we are going to have to look at our codes and design standards. He also complimented the staff for being accommodating within the limitations of existing codes and regulations.

SPECIAL PERMIT NO. 692L,
AMENDMENT TO THE TABITHA NEW COMMUNITY C.U.P.

and

PRELIMINARY PLAT NO. 01016,
TABITHA NEW COMMUNITY 3RD ADDITION,
ON PROPERTY GENERALLY LOCATED
AT NORTH 27TH STREET AND ENTERPRISE DRIVE.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 23, 2002

Members present: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn; Duvall and Hunter absent.

Proponents

1. DaNay Kalkowski appeared on behalf of **Southview, Inc.** The applicant had requested this deferral in order to talk to the neighbors. After listening to their concerns, the developer has re-evaluated its position with respect to the sidewalks and is now revising the plan to show sidewalks on both sides of the private roadways and public streets within the development. The developer met with the Autumn Wood Homeowners Association and showed the revised site plan with the sidewalks on both sides of the street and pointed out the location of the sidewalks, private roadways, and the fence along 27th Street. The neighbors were happy to see the sidewalks; however, the Association did not want to be responsible for maintenance of the fence along 27th Street. This issue will be addressed in the covenants and with a note on the plan such that the lot owners will be responsible for maintenance of the fence. The Association was also concerned about cars driving south on No. 26th Place where the headlights may cause some disturbance to the units south of this property. In response to this concern, the developer is proposing a fence along that south end to avoid any disturbance to those neighbors, which fence will also be maintained by the lot owners.

Kalkowski submitted a new motion to amend the conditions of approval on the preliminary plat accordingly.

2. Brian Carstens reviewed the proposed sidewalk plan on the map. A sidewalk has been added on the south side of Blaine Court; both sides of Farmstead Road 4' away from the curb; both sides of North 26th Place; and a loop up into the existing outlot, connecting back over to Blaine Court.

Kalkowski believes that the staff is in agreement with the proposed amendments.

3. Don Eisele, 5656 Enterprise Drive, testified on behalf of the Autumn Wood Homeowners Association in support, thanking the Commission for allowing the two-week deferral to address their concerns. He thanked the applicant for their cooperation to resolve all the concerns. The additional sidewalks are very acceptable to the neighborhood. The fence has been taken care of. Another concern was the possibility of large construction traffic going down Blaine Court, which is a private street. The applicant has addressed this concern by talking to the contractor and asking them not to use it and to install a sign that no large trucks are allowed. The Association agrees to the 6' fence on the south side to avoid disruption from car lights. Since these concerns have been addressed to their satisfaction, the Autumn Wood Homeowners Association is in support with the changes that have been proposed.

There was no testimony in opposition.

Staff concurred with the proposed amendments.

Public hearing was closed.

SPECIAL PERMIT NO. 692L

AN AMENDMENT TO THE TABITHA NEW COMMUNITY C.U.P.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Carlson moved to approve the staff recommendation of conditional approval, seconded by Newman and carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Duvall and Hunter absent.

PRELIMINARY PLAT NO. 01016

TABITHA NEW COMMUNITY 3RD ADDITION.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Carlson moved approval of the staff recommendation of conditional approval, with the amendments as proposed by the applicant, seconded by Bills and carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Duvall and Hunter absent.

CHANGE OF ZONE NO. 3349
FROM P PUBLIC USE TO R-4 RESIDENTIAL,
ON PROPERTY GENERALLY LOCATED
AT 3023 ARLINGTON AVENUE.
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 23, 2002

Members present: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn; Hunter and Duvall absent.

Jason Reynolds of the Planning staff submitted a letter from the property owner of 3023 Arlington in support, responding to some of the testimony given at the public hearing. Reynolds also submitted a letter from Lisa Good, Interim President of Antelope Park Neighborhood Association, requesting that the Planning Commission action on this change of zone be delayed until February 6, 2002, when a change of zone from R-4 to R-2 is going to be heard by the Planning Commission, which change of zone application includes the subject property.

Steward believes there is rationale for the request for further deferral on this since it would evolve into parallel discussions over the same property. He would like confirmation from staff before making a motion. Is there an action pending and will it be scheduled on February 6th? Reynolds confirmed that a request has been filed to change the zoning in an area of the neighborhood from R-4 to R-2 that includes this property. It has been advertised for the February 6th Planning Commission meeting.

Steward moved to defer action for two weeks, seconded by Newman.

Schwinn stated that he will vote against this motion because he believes this is a straight administrative action. What the neighborhood is doing has no impact on what we're looking at here. We probably shouldn't have even known about the neighborhood's proposal. This change of zone is a mistake that is being corrected. He does not see any point to delay this any longer.

Bills stated that she will also vote against deferral because it could change the value of the land and could have an impact on what this entity did.

Carlson noted that Schwinn and Bill's points are well taken; however, the net calendar effect may be the same. He does not know if staff has a preferred direction. Reynolds advised that, as noted in the staff report, the staff recommends approval of this change of zone. It may be possible to put these two applications together at the Council level, even if there is action on this one today.

Schwinn noted also that it is not a foregone conclusion that the neighborhood's change will even pass.

With permission of the second, Steward withdrew the motion to defer based upon the logic of the discussion. Newman agreed, but stated that she had seconded the motion to defer because she is not convinced the correct zoning is R-4 in this area. If this can catch up at Council and it can all be looked at at the same time, she will vote to move it forward.

Schwinn observed that ultimately, P is not the proper zoning in any event.

Bills moved approval, seconded by Steward.

Carlson has concerns because he believes the general characteristics of this neighborhood may be more appropriate to R-2. But, the Commission must vote on the information before them now.

Motion for approval carried 7-0: Steward, Newman, Taylor, Bills, Carlson, Krieser and Schwinn voting 'yes'; Hunter and Duvall absent.

There being no further business, the meeting was adjourned at 3:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 6, 2002.